

UTAH SENTENCING COMMISSION ANNUAL REPORT 2004

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Utah Sentencing Commission

The Utah Sentencing Commission is responsible for developing sentencing guidelines for adult and juvenile offenders and for proposing recommendations to all three branches of government regarding the sentencing and release of adult and juvenile offenders. The following policy statement guides the Sentencing Commission in these efforts: The primary purposes of sentencing are to punish the offender, protect and compensate the victim and society, and reduce the likelihood of future crimes by the offender through rehabilitation or incapacitation.

Adult Sentencing and Release Guidelines

Drug Offenses

Over a two-year period, the Sentencing Commission evaluated sentencing practices for drug offenses and considered whether those practices warranted the development of a separate guideline for drug offenses. The Commission studied lengths of stay for drug offenders compared with other offenders, rates of commitment to prison for drug offenders, and the availability of treatment for drug possessors. The Commission also noted that all types of drug offenses are currently grouped in the same offense category and discussed whether distinctions should be made in the sentencing guidelines for drug possession offenses, drug manufacturing offenses, and drug distribution offenses.

Ultimately, the Commission concluded that while some changes to the sentencing guidelines are necessary to distinguish between drug possession offenses on the one hand and drug manufacturing and distribution offenses on the other hand, a separate sentencing guideline for drug offenses is not needed. In furtherance of this conclusion, the Commission amended the current Adult Sentencing and Release Guidelines by adding two new offense category columns for drug possession offenses. The new columns will recommend prison for drug possession offenses at a slightly lower rate than for drug manufacturing and distribution offenses and will recommend slightly shorter prison sentences for those offenders convicted of a drug possession offense who are sentenced to prison compared with drug manufacturing and distribution offenses.

The primary purposes of this amendment are to highlight the differences between the nature of drug possession crimes and drug manufacturing and distribution crimes and to encourage treatment for those offenders whose criminality is driven in large part by a substance abuse addiction. The Sentencing Commission recognizes, without condoning any criminal conduct, that drug possession crimes and related property crimes can be significantly reduced, without threatening public safety, by providing a balance of punishment and adequate treatment to drug possession offenders. However, the Sentencing Commission also recognizes that drug manufacturing and distribution offenses present a greater threat to public safety and our quality of life and require a more severe punishment. These recognitions are reflected in the amended Adult Sentencing and Release Guidelines

which will become effective in the spring of 2005.

Electronic Forms

In the spring of 2004, the Sentencing Commission introduced electronic forms for the Adult Sentencing and Release Guidelines. The new forms assist the user in calculating the offender's criminal history and in identifying the Guidelines' recommendations. It is hoped that the new electronic forms will make guidelines calculations more efficient.

Revised Criminal History

The Sentencing Commission initiated discussions in the summer of 2004 on a streamlined criminal history assessment. Because past criminal behavior is one of the best predictors of future risk, the criminal history assessment is a major component of the Adult Sentencing and Release Guidelines. The severity of the Guidelines' recommendation is influenced by the severity of the offender's criminal history.

The current criminal history considers prior adult convictions, juvenile adjudications, supervision history, supervision risk, violence history, and the use of a weapon in the current offense. While all of these categories are important considerations at sentencing, some may more appropriately be considered as aggravating factors for a number of reasons. First, some categories are better predictors of future criminal conduct than others. Second, some categories are subjective and difficult to quantify. Third, the utility of the criminal history assessment may be weakened by attempts to include too many categories. The Sentencing Commission is considering a criminal history that considers only prior convictions and adjudications and lists the other categories as aggravating factors to be considered by the court.

Jail as a Condition of Probation

The Sentencing Commission continues work on guidelines for jail sentences ordered as a condition of felony probation. State statute authorizes judges to impose up to a year-long jail sentence as a condition of felony probation. This is a valuable and often-used alternative to prison. The Commission is attempting to determine why jail sentences for similar offenses vary significantly throughout the state and why the average length of a jail sentence ordered as a condition of probation has increased considerably over the past five years. Guidelines may help provide additional equity in this area of sentencing while preserving the important function of jail sentences as a condition of probation.

Juvenile Sentencing Guidelines

Following a comprehensive review of the Juvenile Sentencing Guidelines, the Sentencing Commission determined that changes to the matrix are not necessary. The Commission feels confident that the Guidelines are fulfilling their primary purposes of providing judges with a starting point in the sentencing process and increasing equity in sentencing across the state while still preserving judicial discretion.

While the matrix saw no changes following the review, the Commission did make significant revisions to the list of aggravating and mitigating factors. The list consolidates similar factors into groups, eliminates seldom-used factors, and adds new factors. As always, the new list is not exhaustive, but simply provides examples of factors judges may consider.



Utah Commission
on Criminal and
Juvenile Justice

UTAH SENTENCING COMMISSION

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Sentencing Commission Legislation Passed During the 2004 General Session

HB 169, Mail Theft Amendments (Rep. Mike Thompson)

HB 169 increased the penalty for theft of mail valued at less than \$300 or mail with a value that cannot be determined from a class B misdemeanor to a class A misdemeanor. The majority of mail theft cases involve mail with a value that cannot be determined, meaning that these cases were charged as class B misdemeanors. Even though the value of this mail cannot be determined, the mail is often quite valuable. For instance, while the exact value of a box of checks, a credit card application, or an actual credit card will either be less than \$300 or cannot be determined, these things obviously have significant value. Prevention of and proper punishment of mail theft is also important as it often leads to identity theft. The former penalty simply was not commensurate with the seriousness of the crime.

HB 180, Death Penalty Provisions (Rep. Sheryl Allen)

Following a year of exhaustive study and debate, the Sentencing Commission recommended the repeal of the firing squad as a method of execution in Utah. The Commission concluded that firing squad executions were drawing attention away from their true purpose of administering the

ultimate punishment authorized by the State. While the offenders being executed gained some level of notoriety due the method of execution, the victim of the offense was often forgotten. The Commission further concluded that allowing the offender to select the method of execution only allowed the offender to exert further control over the State and the victim's loved ones.

HB 184, Voyeurism Amendments (Rep. Brent Goodfellow)

This clean-up bill clarified that a voyeurism statute enacted during the 2003 General Session applies to offenders who do not use electronic equipment in committing the offense as well as those who do use such equipment.

SB 158, Criminal Offense Amendments (Sen. Greg Bell)

SB 158 repealed criminal absconding, a third degree felony. Absconding occurs when a parolee flees supervision or changes his address without permission of the parole officer. The original intent of the absconding law was to discourage parolees from fleeing supervision by establishing a new felony offense. The law has not had its intended impact and has actually had some negative consequences. Because it is easier and safer to simply to return the offender to prison by revoking parole rather than pursuing a new criminal conviction, the Sentencing Commission recommended the repeal of the felony penalty for absconding.

Sentencing Commission Membership

Kay Cornaby Chair - Citizen Representative	Scott Daniels Utah State Bar	Kathy Reimherr Adult Treatment
Sheriff Phil Barney Sheriffs' Association	Sen. Mike Dmitrich Utah Senate	Chief Ed Rhoades Chiefs' Association
Senator Greg Bell Utah Senate	Marlene Gonzalez Ethnic Representative	Mike Sibbett Board of Pardons and Parole
Paul Boyden Prosecutors Association	John Hill Legal Defenders	Sy Snarr Victims Representative
Judge Jeffrey Burbank Juvenile Court Judge	Jim Marchel Juvenile Treatment	Kirk Torgenson Attorney General's Office
Scott Carver Department of Corrections	Judge Paul Maughan District Court Judge	Judge Robert S. Yeates Juvenile Court Judge
Blake Chard Juvenile Justice Services	Ty McCartney House of Representatives	Appointment Pending House of Representatives
Michele Christiansen CCJJ	Fred Metos Utah State Bar	
Judge Terry Christiansen District Court Judge	Brian Namba Juvenile Prosecutor	Ron Gordon Director
Calvin Clegg Youth Parole Authority	Judge Gregory Orme Court of Appeals	